

House Study Bill 511 - Introduced

HOUSE FILE _____

BY (PROPOSED COMMITTEE ON
HUMAN RESOURCES BILL BY
CHAIRPERSON MILLER)

A BILL FOR

1 An Act relating to the certificate of need process including
2 procedures for contested applications and applications
3 relating to institutional health facilities in rural areas.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 135.61, Code 2016, is amended by adding
2 the following new subsection:

3 NEW SUBSECTION. 21A. "*Rural area*" means any of the
4 following:

5 a. A county with a population of less than fifty thousand
6 persons.

7 b. A geographic area outside an urban or suburban setting
8 which, due to its location, requires at least twenty minutes
9 of travel time on normally traveled roads under normal traffic
10 conditions between institutional health facilities of the same
11 type.

12 Sec. 2. Section 135.62, subsection 2, paragraph f,
13 subparagraph (1), Code 2016, is amended to read as follows:

14 (1) Make the final decision, as required by [section 135.69](#),
15 with respect to each uncontested application for a certificate
16 of need accepted by the department.

17 Sec. 3. Section 135.63, subsection 2, Code 2016, is amended
18 by adding the following new paragraph:

19 NEW PARAGRAPH. g. An institutional health facility
20 constructed, renovated, relocated, or otherwise offered or
21 developed in a rural area.

22 Sec. 4. Section 135.64, subsection 1, unnumbered paragraph
23 1, Code 2016, is amended to read as follows:

24 In determining whether a certificate of need shall be
25 issued, the department and council, and the administrative
26 law judge with respect to a contested application pursuant to
27 section 135.66A, shall consider the following:

28 Sec. 5. Section 135.64, subsection 1, paragraph r, Code
29 2016, is amended to read as follows:

30 r. The recommendations of staff personnel of the department
31 assigned to the area of certificate of need, concerning
32 the application, if requested by the council, or by the
33 administrative law judge pursuant to section 135.66A.

34 Sec. 6. Section 135.64, subsection 2, unnumbered paragraph
35 1, Code 2016, is amended to read as follows:

1 In addition to the findings required with respect to any
2 of the criteria listed in subsection 1 of this section, the
3 council ~~shall grant~~ or the administrative law judge pursuant to
4 section 135.66A may approve an application for a certificate
5 of need for a new institutional health service or changed
6 institutional health service only if it the council or the
7 administrative law judge finds in writing, on the basis of data
8 submitted to it by the department, that:

9 Sec. 7. NEW SECTION. 135.66A **Contested application**
10 **procedure.**

11 1. After formal review of an application for a certificate
12 of need has been initiated and notification has been made
13 pursuant to section 135.66 and prior to any final decision
14 on the application, any affected party or affected party's
15 designated representative may contest the application by
16 filing a petition with the department for a hearing on the
17 application. The hearing shall be a contested case proceeding
18 subject to all of the provisions of chapter 17A applicable to
19 contested cases, unless otherwise specified in this section.

20 a. A party contesting the application may petition the
21 department for a contested case hearing under this section by
22 submitting a written request to the director within fifteen
23 days of the date of public notification of formal review
24 pursuant to section 135.66, subsection 2. Any petition
25 filed after the fifteen-day period shall not be accepted and
26 the department shall not have jurisdiction to consider such
27 petition.

28 b. Upon receipt of a timely filed petition, the department
29 shall immediately forward the petition to the department of
30 inspections and appeals for assignment to an administrative law
31 judge.

32 c. A contested case proceeding under this section shall
33 be heard and presided over by an administrative law judge
34 sitting alone. The administrative law judge shall conduct the
35 proceedings as a matter of first impression subject to de novo

1 review.

2 *d.* The subject of the contested case proceeding shall be
3 limited to a single application and shall not concern the
4 merits of any other pending application of the same applicant.

5 *e.* The administrative law judge shall convene the parties
6 for a scheduling conference within fifteen days of the date
7 the petition was filed. During the scheduling conference,
8 each party shall state the party's position regarding the
9 alternative of mediation as provided in paragraph "*g*". If
10 the parties do not agree to mediation, the hearing shall be
11 scheduled to allow for completion of the proceedings within one
12 hundred eighty days from the date the petition was filed, with
13 an initial decision to be entered within sixty days of the date
14 of completion of the hearing. Extensions of or variances in
15 the scheduling shall only be made if substantial prejudice to a
16 party would otherwise result.

17 *f.* The administrative law judge shall enter a proposed
18 decision within thirty days of the date of the initial
19 decision. Following entry of the proposed decision, the
20 decision shall become a final decision unless a party appeals
21 to the department within the time frames established in and in
22 accordance with section 17A.15. If the department declines to
23 hear an appeal on a proposed decision, the proposed decision is
24 a final decision and may be subject to judicial review.

25 *g.* In lieu of a contested case hearing, the parties may
26 participate in mediation. If the parties agree to mediation,
27 the mediator shall be designated by mutual agreement of the
28 parties. Mediation proceedings shall not be subject to the
29 time frames established under this subsection for contested
30 case hearings. Any mediation agreement or failure to reach an
31 agreement shall be part of the record of the proceedings and
32 final decision by the administrative law judge.

33 *h.* A party who is aggrieved or adversely affected by a final
34 decision under this section is entitled to judicial review
35 pursuant to section 17A.19.

1 *i.* All costs of a contested case hearing under this section
2 shall be paid equally by all nonprevailing parties. No costs
3 shall be assessed against the department.

4 2. This section shall not apply to contested cases initiated
5 by the health facilities council regarding certificate of need
6 decisions.

7 Sec. 8. Section 135.69, Code 2016, is amended to read as
8 follows:

9 **135.69 Council to make final decision on uncontested**
10 **applications.**

11 1. The department shall complete its formal review of
12 the application, which is not contested and subject to
13 section 135.66A, within ninety days after acceptance of the
14 application, except as otherwise provided by section 135.72,
15 subsection 4. Upon completion of the formal review, the
16 council shall approve or deny the application. The council
17 shall issue written findings stating the basis for its decision
18 on the application, and the department shall send copies of
19 the council's decision and the written findings supporting
20 the decision to the applicant and to any other person who so
21 requests.

22 2. Failure by the council to issue a written decision
23 on an application for a certificate of need, which is not
24 contested and subject to section 135.66A, within the time
25 required by this section shall constitute denial of and final
26 administrative action on the application.

27 Sec. 9. Section 135.70, Code 2016, is amended to read as
28 follows:

29 **135.70 Appeal of uncontested certificate of need decisions.**

30 1. The council's decision on an uncontested application for
31 certificate of need, when announced pursuant to section 135.69,
32 is a final decision.

33 2. Any dissatisfied party who is an affected person with
34 respect to the uncontested application, and who participated
35 or sought unsuccessfully to participate in the formal review

1 procedure prescribed by [section 135.66](#), may request a rehearing
2 in accordance with [chapter 17A](#) and rules of the department.

3 3. If a rehearing is not requested or an affected party
4 remains dissatisfied after the request for rehearing, an appeal
5 may be taken in the manner provided by [chapter 17A](#).

6 4. Notwithstanding the Iowa administrative procedure Act,
7 chapter 17A, a request for rehearing is not required, prior to
8 appeal under [section 17A.19](#).

9 Sec. 10. Section 135.72, Code 2016, is amended by adding the
10 following new subsection:

11 NEW SUBSECTION. 5. Rules relating to contested
12 applications for certificate of need including procedures
13 pursuant to section 135.66A.

14 EXPLANATION

15 The inclusion of this explanation does not constitute agreement with
16 the explanation's substance by the members of the general assembly.

17 This bill relates to the certificate of need process. The
18 bill provides for an exclusion from the certificate of need
19 process for institutional health facilities constructed,
20 renovated, relocated, or otherwise offered or developed in a
21 rural area. The bill defines "rural area" as a county with
22 a population of less than 50,000 persons or a geographic
23 area outside an urban or suburban setting which, due to its
24 location, requires at least 20 minutes of travel time on
25 normally traveled roads under normal traffic conditions between
26 institutional health facilities of the same type.

27 The bill also establishes a procedure for contested
28 certificate of need applications. The bill provides that after
29 the department of public health (department) has received an
30 application for a certificate of need, formal review of the
31 application has been initiated, and notification regarding
32 the application has been made, if any affected party or a
33 party's representative contests the application and follows the
34 specified process for petitioning, the contested application
35 may be subject to a contested case hearing as provided in

1 the administrative procedure Act, Code chapter 17A, and the
2 provisions of the bill. The bill establishes time frames for
3 the contested case proceeding and also provides for mediation
4 in lieu of the contested case proceeding. A contested case
5 proceeding on an application is to be heard and presided over
6 by an administrative law judge sitting alone, and the hearing
7 is to be conducted as a matter of first impression subject
8 to de novo review. The subject matter of the contested case
9 proceeding is limited to the single application and is not to
10 concern the merits of any other pending application of the same
11 applicant. Once the administrative law judge makes a proposed
12 decision on the application, the proposed decision becomes a
13 final decision unless a party appeals to the department within
14 the specified time frames. If the department declines to hear
15 an appeal on a proposed decision, the proposed decision is a
16 final decision and may be subject to judicial review. A party
17 who is aggrieved or adversely affected by a final decision
18 under the bill is entitled to judicial review. The costs
19 of a contested case hearing are to be paid equally by all
20 nonprevailing parties. No costs are to be assessed against
21 the department. The procedure does not apply to contested
22 cases initiated by the health facilities council regarding
23 certificate of need decisions.

24 The bill makes other conforming changes to reflect the new
25 procedure for contested certificate of need applications.